



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

August 11, 2023

By ECF

The Honorable Ronnie Abrams
United States District Judge
40 Foley Square
New York, New York 10007

Re: *United States v. Devon Archer*, 16 Cr. 371 (RA)

Dear Judge Abrams:

The Government respectfully writes in response to the Court's August 7, 2023 Order. (Dkt. 1077).

The Government does not oppose the defendant's request to remain on bail pending the Supreme Court's decision on his anticipated *certiorari* petition.

The Government does, however, oppose the Court "granting habeas relief and immediately proceeding to resentencing given the . . . Sentencing Guidelines calculation error." (*Id.*). Claims based on Guidelines calculation errors are not cognizable under Section 2255 "unless the claimed error constituted 'a fundamental defect which inherently results in a complete miscarriage of justice.'" *United States v. Hoskins*, 905 F.3d 97, 102 (2d Cir. 2018) (quoting *United States v. Addonizio*, 442 U.S. 178, 185 (1979)). That standard has not been met here. *See id.* at 104 & n.7 (fact that Guidelines are merely advisory demonstrates that there has not been a complete miscarriage of justice).

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: Samuel P. Rothschild

Negar Tekcei
Samuel P. Rothschild
Assistant United States Attorneys
(212) 637-2482 / -2504

cc: Matthew L. Schwartz, Esq. (by ECF)